PRINCIPAL AND AGENT—SALE BY AGENT TO HIMSELF.—The complainants, selling agents, were given authority by the defendants to sell certain lots at a minimum price, fixed by the principals, the agents to retain all that they received above such price. The complainants subsequently tendered money as the down payments on lots remaining unsold with themselves named as purchasers, and demanded the execution, and acceptance of the contracts. The defendants refused to execute them and a bill was filed to compel such execution. *Held,* that there is no conflict between the interest of the principal and that of the agents which prevents the agents from selling the property to themselves. *Hutton, et al.* v. *Sherrard, et al.,* (Mich. 1914) 150 N. W. 135.

The general rule is, that an agent for the selling of property may not sell it to himself. "In all transactions where the agent's loyalty is liable to be affected by his selfish interest, the general rule will apply even though no fraud is practiced." *McKay* v. *Williams,* 67 Mich. 547; *Green* v. *Knoch,* 92 Mich. 26; *Obert* v. *Hammel,* 18 N. J. Law 74. Many courts have held that the fact that the agent purchased at the price at which he was authorized to sell will not make the transaction valid. These holdings have been based on grounds of public policy:—that an agent has peculiar facilities for obtaining exclusive information in respect of the property intrusted him, and to have a superior advantage for making sales; that the individual interest is to purchase at the lowest price, thus placing the agent in a position inconsistent with the faithful discharge of his duties. Such transactions will always be looked on with suspicion. *Rich v. Black & Baird,* 173 Pa. St. 92; *Colbert & Kirtley* v. *Shepherd,* 89 Va. 401; *Tilleny* v. *Wolverton,* 46 Minn. 256; *Ruckman* v. *Bergholz,* 37 N. J. Law 437; *Anderson* v. *Bank,* 5 N. D. 451. In all of these cases, however, the agent was to receive a percentage commission. Under such contracts the principal profits by any price in excess of the minimum selling price. In the principal case, the principal could not profit beyond the minimum price. The result of the purchase, even though by the agent, would be the same to the principal, and clearly this was not inconsistent with the duty of the complainants, as agents. Their diligence was of no benefit to the defendants beyond the minimum price. This takes the principal case out of the general rule. *Synott* v. *Shaughnessy,* 2 Idaho (Hasb.) 111. There is some conflict, though, on this question. In *Chezum* v. *Kreighbaum,* 4 Wash. 680, the court held "a contract giving a person 'the exclusive sale of my land for sixty days for $6,000', and providing 'he must get his commission above that' simply confers upon him the exclusive agency for the sale of said property, and does not entitle him to an option authorizing him to demand and receive a deed to himself." There was a dissenting opinion in that case, the effect of the reasoning being that no matter how much labor or money the agent might have expended, if he had failed to make a sale for a greater price than that stipulated he could have recovered nothing, that this contract was entered into on the doctrine of chances, that the sale, if made, was for the mutual benefit of both. In a more recent case, *Bentley & Wear* v. *Nasmith,* 46 Can. S. Court 477, by terms of an agreement a broker became agent for the

sale of lands with the option of purchasing for himself. Within a few days after the date of the option, he effected a sale, in his own name, of the lands for just double the price stipulated. The court held that he could not become a purchaser till he had divested himself of the character of agent; that he was, as agent, bound to disclose to his principal, knowledge he had acquired respecting the improved prospects of a sale at an enhanced value; and that he was not entitled to specific performance. For a further discussion of this subject, see 13 MICH. LAW REV. 429.

RAILROADS—COVENANT FOR PRIVATE CROSSING—PARTIES LIABLE.—The "Short Line" railroad had a right of way through the plaintiff's property. The predecessor in title of defendant railroad laid out a route through the same land which would necessitate crossing the tracks of the "Short Line" at two places. To obviate this inconvenience both roads got grants of land from the plaintiff enabling them to run parallel instead of crossing. Part consideration for the deed to the defendant's predecessor was a covenant to build a crossing over its tracks. This covenant was never performed and the plaintiff brought an action in equity to compel specific performance. *Held,* that specific performance would be refused and the case remanded for the ascertainment of proper damages. *Linthicum* v. *Washington, B. & A. Electric R. Co.,* (Md. 1914) 92 Atl. 917.

The opinion of the court in this case is very unsatisfactory. Almost at the very beginning they declare that it is not a covenant running with the land as it relates to something to be done in the future. *Spencer's Case,* 5 Coke 16. But they do not add that their conclusion is based on that theory of *Spencer's Case* which says that the covenant must have relation to something already in existence or that "assigns" be named. Immediately after, they decide that the covenant is obligatory upon the railroad's successor. In arriving at their conclusion they very evidently had in mind the commonly accepted doctrine of *Tulk* v. *Moxhay,* 2 Ph. 774, to the effect that a vendor may impose restrictions on land conveyed by him, for the benefit of his remaining land in such a manner as to be binding, not only on the vendee, but on his assigns, even though they are not, strictly speaking, covenants running with the land. To this procedure would be the objection that *Tulk* v. *Moxhay* has been generally applied only to restrictive covenants. *Haywood* v. *Brunswick Building Society,* 8 Q. B. Div. 403; *Austerberry* v. *Corporation of Oldham,* 29 Ch. Div. 750; *London County Council* v. *Allen* [1914] 3 K. B. 642, see 13 MICH. L. REV. 150; *McMahon* v. *Williams,* 79 Ala. 288; *Post* v. *Weil,* 115 N. Y. 361, 12 Am. St. Rep. 809; *Watrous* v. *Allen,* 57 Mich. 362, 58 Am. Rep. 363; *Stines* v. *Dorman,* 25 Ohio St. 580; see TIFFANY, REAL PROPERTY, 764. After affirming the obligation of the covenant, the court refuses specific performance on the ground that the injury to the defendant would be greater than the benefit to accrue to the plaintiff. But they retain jurisdiction of the case for the purpose of assessing damages, on the ground, probably, that equity having once assumed jurisdiction, will retain it for all the purposes of the case.